**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 388 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT & 1 - Petitioner(s)**
**Versus**
**MUNTA AALAMKHAN NURBEG - Respondent(s)**

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**Appearance :**
MR IM PANDYA AGP for Petitioner(s) : 1 - 2.
MS HINA DESAI for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 10/07/2007**

**ORAL JUDGMENT**

1. Mr.I.M. Pandya, learned counsel for the petitioners and Ms.Hina Desai, learned counsel for the respondent.

2. The petitioners, being aggrieved by the award dtd.30/4/1998 made by the Presiding Officer, Labour Court, Bhuj-Kutch in Reference (LCR) No.405 of 1996 [Old Reference (LCR) No.868 of 1991], is before this Court with a submission that the learned Labour Court could not proceed ex-parte against the petitioner, nor could direct reinstatement in view of the fact that the project, in which the respondent was employed, was closed down.

3. It is to be seen that the originally the dispute was sent by the Assistant Labour Commissioner, Adipur vide his order No.KH/SHMC/RAJ/S/132/1990 dtd.17/7/1991 to the Labour Court, Rajkot, but after the Labour Court was established at Gandhidham, the Reference was transferred from Rajkot to Gandhidham.

4. After the reference was received, as observed in the award, the Labour Court at Gandhidham re-registered the case as Reference (LCR) No.405 of 1996 and under the Exh.16 issued notices to the parties. After the notices were served, one Mr.Am.M. Thakker filed his Vakalatnama for and on behalf of the workman but the present petitioners - State did not choose to appear in the

matter. The Labour Court proceeded ex-parte and after holding that the workman had worked for more than 240 days in 12 calender months preceding the date of retrenchment / illegal removal, directed reinstatement with 70% back wages.

5. The submission of Mr.I.M. Pandya, learned counsel for the petitioners that after transfer of case, no notices were issued to them, the petitioners were taken by surprise and the matter went in default, cannot be accepted. In view of the statement made in the judgement that the notices were served, I must immediately reject and accordingly reject the submission made by Mr.Pandya, learned Assistant Government Pleader.

6. The findings relating to working for more than 240 days appears to be reasonable and justified, because, there was no controversy against the said proof and plea.

7. So far as the question of closure of project is concerned, it was a plea raised but was not substantiated by leading any evidence or by producing documents. A plea if is in relation to a factual dispute, then it is to be substantiated by leading evidence. In absence of evidence, such a plea has no legs to stand. The arguments raised by Mr.I.M. Pandya, learned Assistant

Government Pleader deserves to and are accordingly rejected.

8. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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